

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOEL CHRISTOPHER HOLMES,

Petitioner,

v.

ROBERT FERGUSON,

Respondent.

No. 3:20-CV-5718-BJR-JRC

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DENYING  
HABEAS PETITION

This matter is before the Court on a Report and Recommendation by the Honorable J. Richard Creatura, U.S. Magistrate Judge, which recommends denial of Petitioner Joel Christopher Holmes' petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is proceeding *pro se* and *in forma pauperis*.

The Report and Recommendation was mailed to Petitioner on February 17, 2021, at his address of record with the Court, but it was returned by the Postal Service as undeliverable. Dkt. No. 24. Petitioner last notified the Court of an address change in August 2020, when he provided the address where the Report and Recommendation was mailed. Dkt. No. 10. Since notifying the Court of his new address in August 2020, Petitioner has continued to list the same address in his filings with the Court. *See, e.g.*, Dkt Nos. 19 and 20 (return address listed on Petitioner's reply to Respondent's response to his habeas petition). In addition, Magistrate Judge Creatura issued an order regarding supplemental briefing on December 4, 2020 (Dkt. No. 21),

1 which was mailed to Petitioner at his address of record and was not returned to the Court by the  
2 Postal Service. As a result, it appears that Petitioner changed his address at some point after  
3 December 4, 2020, but failed to notify the Court of his new address. Petitioner has not provided  
4 the Court with alternative means of contacting him, such as an email address or a telephone  
5 number.

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7 Local Civil Rule 10(f) requires any party not represented by an attorney to file a notice of  
8 change in address with the Court within ten days of the change. As demonstrated by Petitioner's  
9 prior filing of a notice of change of address with the Court, Petitioner is aware of the need to  
10 notify the Court of an address change. In addition, Petitioner has pursued many actions in this  
11 Court<sup>1</sup> and should be well aware of his obligation to notify the Court of any change in address.

12 The Court has reviewed the Report and Recommendation de novo. The Court agrees  
13 with Magistrate Judge Creatura's recommendation that the petition for a writ of habeas corpus  
14 under 28 U.S.C. § 2254 should be denied. First, Petitioner has not met his burden of  
15 demonstrating that he is "in custody" for the purposes of a challenge under 28 U.S.C. § 2254 to  
16 his conviction in Thurston County for promoting a suicide attempt. In addition, Petitioner has  
17 not demonstrated that his conviction in Thurston County resulted in a decision that was either  
18 "contrary to, or involved an unreasonable application of, clearly established Federal law, as  
19 determined by the Supreme Court of the United States" or "based on an unreasonable  
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24 <sup>1</sup> See, e.g., *Holmes v. Satterberg*, C11-397-RAJ; *Holmes v. Lovick*, C11-1097-RSM; *Holmes v. State*, C12-729-  
25 MAT; *Holmes v. AARP Foundation Work Search*, C12-1907-JCC; *Holmes v. Roberts*, C13-254-MJP; *Holmes v.*  
26 *Russell*, C13-1282-RAJ; *Holmes v. Velategui*, C13-2105-RSL; *Holmes v. Miller-Stout*, C14-639-JLR; *Holmes v.*  
*Miller-Stout*, C14-1863-RSL; *Holmes v. Satterberg*, C16-746-RAJ; *Holmes v. Roberts*, C16-747-RSL; *Holmes v.*  
*Cauci*, C16-784-TSZ; *Holmes v. Satterberg*, C17-1705-TSZ; *Holmes v. Roberts*, C17-1883-TSZ; *Holmes v. Miller-*  
*Stout*, C17-5145-RJB; *Holmes v. Carson*, C18-1039-MJP; *Holmes v. Bowden*, C19-0042-JRL; *Holmes v. Lanese*,  
C19-5027-RBL.

determination of the facts in light of the evidence presented in the State court proceeding,” as required by 28 U.S.C. §§ 2254(d)(1) and (d)(2).

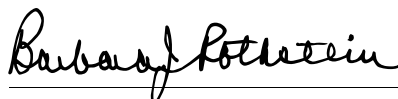
The Court further agrees with Magistrate Judge Creatura’s recommendations that: (1) Petitioner should be denied a certificate of appealability under 28 U.S.C. § 2253(c)(2) because he has not made a substantial showing of the denial of a constitutional right; and (2) Petitioner’s *in forma pauperis* status should be revoked on appeal pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A) because an appeal would be frivolous and not taken in good faith.

Therefore, the Court finds and ORDERS as follows:

1. The Court ADOPTS the Report and Recommendation (Dkt. No. 23).
2. Petitioner’s petition for a writ of habeas corpus is DENIED.
3. No certificate of appealability is granted.
4. Petitioner’s *in forma pauperis* status is revoked for purposes of appeal.

The Clerk shall send copies of this Order to Petitioner at his address of record and to Magistrate Judge Creatura.

Dated: April 23, 2021



Barbara Jacobs Rothstein  
U.S. District Court Judge